INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D129/02

Penalty tax – failure to report part of income – reasonable excuse.

Panel: Ronny Wong Fook Hum SC (chairman), Samuel Chan Yin Sum and Liu Ling Hong.

Dates of hearing: 18 November 2002 and 18 February 2003.
Date of decision: 15 March 2003.

The appellant was employed by Company A, a United Kingdom company, to work for its subsidiary, Company B, in Hong Kong.

The appellant failed to include her income from Company B in her tax return. As a result, additional tax was imposed upon her.

The appellant explained that she mistook that the income from Company B was subject to United Kingdom tax instead of Hong Kong tax.

Held:

Having read the documents produced by the appellant, the Board found her belief though mistaken was reasonable.

Appeal allowed.

Ngai See Wah for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

Background

1. Company A is a company incorporated in the United Kingdom ('UK').

2. Company B is a subsidiary of Company A incorporated in Hong Kong on 8 March 2000. Company B applied for a business registration on 16 March 2000 but it had not by then commenced its computer software development and consultancy business. It changed its name on 5 January 2001.

3. By letter dated 14 June 2000, Company A offered the Appellant the position of director of business solutions with Company B based in Hong Kong. An employment agreement dated 15 June 2000 between Company B was signed by the Appellant on 22 June 2000 and by Company A on 22 September 2000.

4. On 10 May 2001, the Appellant submitted her return for the year of assessment 2000/01. She reported to the Revenue her earnings from Company C for the period between April and July 2000.

5. By an employer's return dated 12 June 2001, Company B reported to the Revenue the earnings of the Appellant for the period between 24 July 2000 and 31 December 2000 amounting in total to $367,142. By notice of assessment dated 25 July 2001, the Appellant was assessed on the basis of her combined income from Companies B and C. The Appellant did not raise any objection against that assessment.

6. By notice dated 27 June 2002, the Appellant was informed by the Commissioner of his intention to impose additional tax by virtue of the Appellant's failure to include in her return her earnings of $367,142 from Company B. The amount of tax which would have been undercharged had the Appellant's return been accepted as correct is $44,483. After considering representations from the Appellant, the Commissioner imposed additional tax in the sum of $4,400 on 23 August 2002.

7. This is the Appellant's appeal against the additional tax so imposed.

Progress of this appeal

8. At the November 2002 hearing before us, the Appellant explained that she did not include her earnings from Company B in her return as she believed that her earnings were from Company A and subject therefore to UK tax. She told us that she left the employment of Company A on 31 December 2000 and Company B was only activated after her departure. We took the view that the Appellant should have in her possession documents which support her assertions. With the consent of the Respondent, the appeal was adjourned so as to enable the Appellant to produce additional evidence to support her contentions.

9. During the adjournment, the Appellant produced the following additional documents:

(a) The offer letter from Company A dated 14 June 2000 and the employment agreement dated 15 June 2000 referred to in paragraph 3 above.

(b) Visiting cards which the Appellant used for the period between July and December 2000. According to those visiting cards, she was the 'A.P. Director of Business Solutions' of Company A.

(c) An entrance card for an exhibition held in Brisbane in late July 2002 with Company A as the 'Exhibitor'.

(d) Credit advice dated 4 December 2000 and 8 January 2001 indicating remittance of her salary by Company A.

(e) An e-mail from one Ms D of Company B to the Appellant dated 12 June 2001 when Ms D asked the Appellant for details to be inserted in Company B's tax return. According to the Appellant, Ms D called her shortly before sending her this e-mail. She learned for the first time the activation of Company B and that her earnings would be reported to the Revenue by Company B.

10. After considering these additional materials from the Appellant, Mr Ngai for the Revenue fairly accepted the possibility that the Appellant omitted the sum in question in her return by virtue of her belief that the sum was subject to UK as opposed to Hong Kong tax.

Our decision

11. We accept the evidence of the Appellant and find that the Appellant did omit the sum in question in the belief that the same was subject to UK tax. Given the course of dealings between the Appellant and Company A and the dormant state of Company B prior to the Appellant's departure, we are of the view that the Appellant's belief is a reasonable one. In these circumstances, we hold that the Appellant has a reasonable excuse in omitting the relevant sum from her return. We would therefore discharge the additional tax levied on her.

12. It is a matter of regret that the Appellant did not put forward the documents referred to in paragraph 9 above for the Commissioner's consideration when she put forward her explanation on 15 July 2002. Had it not been for the reasonable stance which Mr Ngai adopted throughout this appeal, the Appellant would have serious difficulty in persuading us to set aside the assessment.